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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Bell Operating Companies'

Tariff for the 800 Service

GTOCs' costs and failed to provide the opportunity for comment that such partial authorization is 'just, fair, and reasonable' as required by Section 204(b)."²

GTE's application is fatally flawed. In its effort to bring into effect an 800 data base query rate that is substantially higher than any other carrier's rate for comparable service (and more than twice the industry mean),³ GTE has confused three different statutory provisions. Contrary to GTE's claims, the only statutory provision relevant to the partial suspension of GTE's proposed rate is that cited by the Bureau: Section 204(a). As set forth below, GTE is therefore wrong in its arguments that the Bureau's partial suspension was unlawful and unjustified.

I. THE PARTIAL SUSPENSION ORDERED BY THE BUREAU IS CONSISTENT WITH COMMISSION PRECEDENT AND THE PLAIN LANGUAGE OF SECTION 204(a).

The order under review is not the first occasion which the Commission has been called upon to interpret its partial suspension authority under Section 204(a). In the so-called "dark fiber" proceeding, the Common Carrier Bureau suspended a portion of the rates filed by four local exchange carriers which, in response to a Commission order, had terminated their individual-case-basis tariffs for dark fiber and filed generalized rates. The four carriers applied for review of the Bureau's partial suspension decision, raising arguments akin to those advanced by GTE in the instant

^{2/} Application for Review of GTE, CC Docket No. 93-129, at 3 (filed May 28, 1993) [hereinafter cited as "GTE Application"].

^{3/} See Bureau Order at ¶ 19. GTE's proposed basic query rate was 1 cent per query. The industry mean rate was calculated at .44 cent per query. The Bureau Order suspended rates to the extent that they exceeded a standard deviation above the industry mean or, in other words, rates above .67 cent per query.

application. The dark fiber carriers, like GTE here, argued that the Bureau's action was "tantamount to a prescription of rates" allowed only under Section 205 and that "the legislative history indicates that Section 204(a) was only meant to allow the Commission to suspend parts of rate changes for existing services."⁴

The Commission affirmed the Bureau's exercise of Section 204(a)'s partial suspension authority in the dark fiber case.⁵ The Commission held that "the plain language of Section 204(a) permits suspension of a charge 'in whole or in part' for five months beyond the period when it would otherwise go into effect," and found that the relevant legislative history was consistent with this interpretation.⁶ In the absence of any judicial interpretation of Section 204(a)'s partial suspension language, the Commission's prior ruling should be dispositive of GTE's application.

the rate filed by the carrier."⁸ Even if this conclusion were accurate (and the Commission has specifically held that it is not),⁹ it is inapposite to the situation at hand.

GTE seems to have conveniently overlooked the fact that the Commission has found 800 data base service to be "an improvement of an existing service, not a new service."¹⁰ The creation of an unbundled data base query rate element for this restructured service results in a "new or revised charge" for an existing service, which is unmistakably within the purview of Section 204(a).

If there were ever any lingering doubts about the breadth of the Commission's authority under Section 204(a), they should have been removed by Congress last fall. At that time Congress amended Section 204(a) to ensure that proposals for "revised" rates, not just "rate increases," are subject to the Commission's partial suspension and refund authority.¹¹ Thus, GTE's mischaracterization of the Bureau's action as a "rate reduction" for a "new service" misses the point. Regardless of the self-serving description applied by GTE, the Bureau's partial suspension was unquestionably within the authority granted by Section 204(a).

^{8/} Id. at 8 (emphasis added).

^{9/} Dark Fiber Order, 6 FCC Rcd at 4777 (¶ 11) ("... , we find nothing in the legislative history to indicate that the Commission's partial suspension authority is limited to existing services.")

^{10/} Provision of Access for 800 Service, 8 FCC Rcd 907, 911 (1993) (¶ 26) (emphasis added).

^{11/} See Telecommunications Authorization Act, Pub. L. No. 102-538, Title II, § 203, 106 Stat. 3542 (1992) (replacing four references to "increased charges" with "revised charges" or "new or revised charges"); see also H. Rep. No. 207, 102d Cong., 1st Sess. 30 (1991) (accompanying § 204(a) amendments) ("... there should be no doubt about the Commission's comprehensive authority to review and adjust rates charged by providers of local telephone exchange services.")

II. THE PARTIAL SUSPENSION AUTHORITY GRANTED TO THE COMMISSION UNDER SECTION 204(a) IS NOT CIRCUMSCRIBED BY SECTION 204(b) OR SECTION 205.

In an unusual approach to statutory construction, GTE argues that, even if partial suspension authority is available to the Commission under Section 204(a), the Bureau must still be reversed because it did not follow the procedures specified by Section 204(b) or by Section 205.¹² This argument is patently erroneous, and requires only a brief refutation.

A. The Provisions Of Section 204(b) Do Not Restrict The Commission's Partial Suspension Authority Under Section 204(a).

A panel of the U.S. Court of Appeals for the District of Columbia Circuit has held that Sections 204(a) and 204(b) are not in conflict, but "are complementary and designed to serve different purposes."¹³ The court held that Section 204(b) provides an alternative to Section 204(a) in dealing with partial or temporary rate revisions, and is not intended "to supplant Section 204(a) and always require the showing which is necessary under Section 204(b) before tariff revisions may go temporarily into effect."¹⁴

Moreover, Section 204(b) has significant substantive differences from Section 204(a). Section 204(b) provides that "the Commission may allow part of a charge," as compared to the authority to "suspend the operation of such charge, . . . in whole or in part" provided under Section 204(a) (emphasis added). A partial rate "authorization" under Section

^{12/} GTE Application at 4-6, 9-10.

^{13/} MCI Telecommunications Corp. v. FCC, 627 F.2d 322, 333 (D.C. Cir. 1980).

^{14/} Id. at 336.

204(b) is without a specified time limit, which is clearly different from the five-month partial suspension authority provided under Section 204(a).

In addition, Section 204(b) contemplates partial or temporary rates which may result from a showing that such rates are "just, fair, and reasonable," while Section 204(a) formulates methods for protecting ratepayers from charges which may "be found not justified" during the course of an investigation to make precisely that determination. These differences are highlighted by the first words of Section 204(b), which state clearly that its provisions are "[n]otwithstanding the provisions of subsection (a) of this section."

Section 204(b) provides the Commission with additional flexibility in dealing with rate revisions and does not circumscribe the scope of action available under Section 204(a). GTE is thus incorrect in its assertion that the Bureau was required to invite a written showing from GTE and comments from interested parties, as required under Section 204(b), before exercising the partial suspension authority granted the Commission by Section 204(a).

B. Section 205's Requirements Are Irrelevant To A Partial Suspension Under Section 204(a).

GTE claims that the partial suspension of its 800 data base query rates amounts to a rate prescription without a "full opportunity for a hearing" and findings based on record evidence.¹⁵ It is the actual impact of the Bureau's decision, however, and not the language which may be used to describe it, that determines whether a rate has been "prescribed."¹⁶ An examination of the impact of the Bureau's order reveals no prescription; only

^{15/} GTE Application at 4.

^{16/} See, e.g., MCI, 627 F.2d at 337.

interim rates have been established, which will be in effect for only five months or until the investigation is concluded.

A similar partial suspension of rates was determined by the Commission not to be a rate prescription in the proceeding involving dark fiber services. There, as here, the suspension "had the effect of temporarily establishing interim rates based on the remaining portion of the recurring charges filed by the carriers" that were not subject to a five-month suspension.¹⁷ A partial suspension precedes the determination of a lawful rate level. It does not supplant that determination. GTE's argument to the contrary is simply semantic maneuvering.

III. GTE'S "PUBLIC INTEREST" ARGUMENT IS UNPERSUASIVE.

GTE states that the more appropriate course for the Bureau would have been to let GTE's full rate go into effect and to establish an accounting order. A finding of unlawfulness, according to GTE, would ultimately result in a refund of excessive charges.¹⁸

GTE obviously believes that its own financial interests should be the primary factor in determining the public interest. The Commission has found otherwise. In its dark fiber ruling, the Commission explained that a "decision to exercise the partial suspension power served the public interest since a total suspension would have deprived customers of service, and investigation without suspension could have subjected customers to excessive rates."¹⁹ In their petitions to reject and suspend, National Data and others detailed the injuries which they and other users would suffer if

^{17/} Dark Fiber Order, 6 FCC Rcd at 4777 (¶ 12).

^{18/} GTE Application at 10.

^{19/} Dark Fiber Order, 6 FCC Rcd at 4777 (¶ 12).

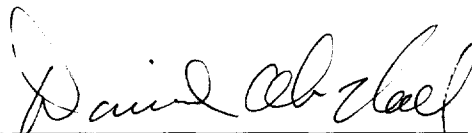
GTE's excessive rates were allowed to go into effect, injuries which would have not have been recompensed by refunds many months hence.²⁰ The Bureau's task was to balance these competing concerns. While National Data and other 800 service users requested -- and would have preferred -- a much lower interim rate, GTE would have preferred that its full rate be allowed into effect. Both were outside the balance struck by the Bureau. That is not grounds for reversal.

IV. CONCLUSION

For the reasons set forth above, the Commission should deny GTE's application for review of the Common Carrier Bureau's decision to effect a partial suspension of GTE's basic 800 Service data base query rate and should affirm the partial suspension for the full five months ordered by the Bureau.

Respectfully submitted,

NATIONAL DATA CORPORATION

By: 

Joseph P. Markoski
David Alan Nall
Kerry E. Murray
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044
(202) 626-6600

Its Attorneys

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^{20/} See, e.g., National Data's Consolidated Petition to Reject or, in the Alternative, to Suspend and Investigate, CC Docket No. 86-10 at 3-6 (filed Mar. 18, 1993) (discussing effects of high query rates on transaction processors' costs and likely migration from switched services).

CERTIFICATE OF SERVICE

I, Carolyn Pratt, hereby certify that copies of the foregoing
Comments of the National Data Corporation were served by hand or by
First-Class United States mail, postage prepaid, upon the following parties,
this 14th day of June, 1993.

Kathleen B. Levitz
Chief, Common Carrier Bureau
Federal Communications Commission
Mail Stop 1600
Room 500
1919 M Street, N.W.
Washington, D.C. 20554

Ward W. Wueste, Jr., HQE03J43
Richard McKenna, HQE03J36
GTE Service Corporation
P.O. Box 152092
Irving, Texas 75015-2092

Gregory J. Vogt
Chief, Tariff Division
Common Carrier Bureau
Federal Communications Commission
Mail Stop 1600C
Room 518
1919 M Street, N.W.
Washington, D.C. 20554

Alfred Winchell Whittaker
Kirkland & Ellis
Suite 1200
655 Fifteenth Street, N.W.
Washington, D.C. 20005

Gail L. Polivy
GTE Service Corporation

Carol R. Schultz
MCI Telecommunications Corporation